

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re the Application of:

Beams, et. al.

Serial        09/934,924  
No.:

Filed:        August 22, 2001

For:           Creating a Virtual Consultant

Atty.    Docket    005222.00184  
No.:

Group Art Unit:    2157

Examiner:            Salad, Abdullahi  
Elmi

Confirmation        9686  
No.:

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

**Box Appeal Briefs - Patents**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

This paper is responsive to the Final Office Action mailed on February 22, 2007.

A Notice of Appeal is filed concurrently with this request for review. The Office is authorized to charge any associated fees to Deposit Account No. 19-0733.

### Discussion and Argument

The Final Office Action mailed February 22, 2007 rejected independent claim 20 under 35 U.S.C § 103(a) as being unpatentable over US Patent No. 5,310,349 (Daniels) in view of US Patent No. 6,029,195 (Herz). Claim 20 includes the following features (Emphasis added.):

20. **(Previously Amended)** A method for providing one or more virtual instructors, comprising the steps of:
- (a) connecting a server and one or more users and a first virtual instructor;
  - (b) selecting a destination within the server to interact with the one or more users;
  - (c) coupling the one or more users through the server based on the selected destination;
  - (d) establishing interaction parameters for the one or more users based on the selected destination; and
  - (e) **dynamically adding a second virtual instructor with the first virtual instructor and the one or more users.**

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Regarding independent claim 20, the combination of Daniels and Herz fails to even suggest the feature of “dynamically **adding** a second virtual instructor **with** the first virtual instructor and the one or more users.” (Emphasis added.) The Office Action admits (Page 4.):

Daniels is silent regarding: dynamically adding second virtual instructor with the first virtual instructor and the one or more users.

The Office Action alleges (Page 4. Emphasis added.):

**Herz discloses teacher load balancing system** including dynamically adding second virtual instructor (second teacher) (see col. 94, lines 47-67). Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to incorporate the teaching of Herz into the system of Daniels such

that more proficient teachers in math or reading can be assigned to reach less proficient students based [on the] needs of the students.

Herz does disclose (Column 94, lines 47-67. Emphasis added.):

In one approach school activities (from either one or a large number of schools) may be accessible for participation remotely. Classroom lectures, continuing education seminars, conferences, tutorials for job training (or on-going job training requirements) may apply. The most exemplary application however is the virtual classroom. Students may use nearest neighbor indexing to either describe or present a particular topic or problems or a query. The system will recommend the most appropriate on-line lecture either live, if the student wishes to interact (e.g., recommending the next scheduled time) or the most appropriate pre-recorded lecture. For solutions to problems, a virtual tutor involving (either a live or pre-recorded single (closed) session or multi-student session may be presented similarly) **or** the student may receive a recommendation of the name of the most skilled or experienced faculty or student recommended tutor. In the classroom application the student may either present questions on-line to the lecturer (throughout the lecture or at pre-designated intervals) **or** the best ones may be selected by a moderator.

Herz merely discloses that a student receives a recommendation for an instructor that is best suited for the student. Rather than a second instructor being added with the first instructor, only one instructor is selected for the assignment of teachers based on the needs of the student. A second instructor is not added with the first instructor. Either one instructor or another instructor is selected but not both.

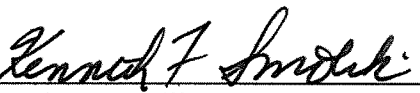
Moreover, there is a lack of motivation to combine the teachings of Daniels and Herz. The Office Action alleges that Herz discloses a load balancing system for dynamically adding a second virtual instructor. However, adding a second instructor would increase the loading demands on an education system, thus exacerbating any resource shortages of the educational system. Consequently, the Office Action fails to establish a case of *prima facie* obviousness.

Similarly, independent claim 29 includes the feature of “logic that dynamically adds a second virtual instructor with the first virtual instructor and the one or more users.” Independent claim 30 includes the similar feature of “code that dynamically adds a second virtual instructor with the first virtual instructor and the one or more users.” Claims 21-28 ultimately depend from claim 20, and claims 31-38 ultimately depend from claim 30. Thus, claims 20-38 are patentable for at least the above reasons.

Respectfully submitted,

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